

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Creation of a Low)	MM Docket No. 99-25
Power Radio Service)	
)	

To: The Commission

**REPLY COMMENTS OF
NATIONAL PUBLIC RADIO, INC.**

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Summary

We empathize with the desire of the LPFM community for more LPFM stations, more quickly. Having endured regulatory bars to the filing of new full power and translator station applications for much of the last ten years, noncommercial educational stations appreciate the limited resources the Commission is forced to operate with and the significant demand for broadcast spectrum. Merely because a significant number of translator applications were filed during the 2003 filing window, however, does not justify fundamentally altering, and undermining, well-established and important translator and full power FM services.

Public radio translator stations provide important localized public services to those least served by broadcast and other electronic media. These services are offered in response to local demand and with financial support from the Federal and state governments as well as the local community. There is no basis to assume that, because LPFM stations are *permitted* to originate programming, every LPFM station is inherently superior to, and therefore justified in displacing, every translator. This is so even in the case of satellite-fed translators and translators located some distance from the parent station. The Commission therefore should not make LPFM stations primary to translator stations or summarily dismiss all pending translator station applications.

The Commission should also retain the second and third adjacency protections for subsequently authorized full power stations, the minimum distance separations methodology for siting LPFM stations, and the intermediate frequency ("IF") protection. Congress drew no distinction between then-existing and future full-power stations in mandating the maintenance of minimum distance separations for co-, first-, second-, and third-adjacent full power stations. As a matter of spectrum policy, moreover, the record in this proceeding provides no basis for

adopting a contour overlap methodology or eliminating any existing interference protections. To the contrary, and particularly because the LPFM service is still in its infancy, we urge the Commission to maintain the status quo with regard to the rules governing LPFM's interoperation with the other broadcast services.

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Reply Comments of National Public Radio, Inc.

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

In its initial Comments, NPR expressed support for improving the LPFM service while preserving its highly localized character, especially by reinstating the original local and multiple ownership rules.² Many commenters, particularly in the LPFM community, also supported strict

¹ Second Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 99-25, 20 FCC Rcd. 6763 (rel. Mar. 17, 2005) [hereinafter "Second Reconsideration Order/Further Notice"]. Unless otherwise indicated, all Comments cited herein are initial Comments filed in response to the Second Reconsideration Order/Further Notice.

² Comments of National Public Radio, Inc. at 2-5 [hereinafter "NPR Comments"].

ownership limits.³ As the Commission itself has made clear, moreover, any effort to improve the LPFM service must "maintain[] the integrity of the FM service."⁴ Along with the vast majority of commenters, NPR believes that if "maintaining the integrity of the FM service" means anything, it must mean preserving the important public services provided by FM translator stations and avoiding new LPFM interference to full power stations.⁵ Given the importance of preserving the services provided by public radio translator and full power stations, NPR devotes its Reply Comments to the proposals that directly threaten those services.

I. The Commission Should Not Alter the Status of Translator and LPFM Stations

In the initial Comments, we and many others urged the Commission not to alter the careful balance that it struck between translator and LPFM stations when it established the LPFM service just a few years ago.⁶ As we explained, translators constitute a critical component

³ See Comments Of Prometheus Radio Project, National Federation Of Community Broadcasters, Office Of Communication, United Church Of Christ, Inc., Free Press, Common Cause, Center For Creative Voices In Media, The U.S. Public Interest Research Group, Center For Digital Democracy, CCTV Center For Media & Democracy, Media Alliance, Benton Foundation, Reclaim The Media, The Center On Democratic Communications, New Mexico Media Literacy Project, Media Democracy Chigaco [sic], Citizens For Independent Public Broadcasting, New America Foundation, Students Concerned About Mass Media, The People's Channel, National Hispanic Media Coalition, Portsmouth Community Radio-WSCA, Radio Free Moscow-KRFP, Valley Free Radio-WXOJ, KDRT, Richmond VA Greens Party, Hawaii Consumers, Thinking Out Loud, and The Future Of Music Coalition at 21-25 [hereinafter "Prometheus Comments"].

⁴ Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6763.

⁵ One of the Prometheus group of LPFM advocates established an Internet-based comment filing "mill," resulting in the filing of a large number of brief, identical or nearly identical comments. See <http://www.freepress.net/fcc/comment.php?d=99-25>. Because these comments fail to illuminate the issues raised in the Second Reconsideration Order/Further Notice, they warrant scant consideration.

⁶ NPR Comments at 5-14. See Comments of Public Radio Regional Organizations at 2 [hereinafter "PRRO Comment"]; Comments of Station Resource Group at 11 [hereinafter "SRG Comments"]; Comments of Public Radio FM Translator Licensees at 1; Joint Comments of the

of the public radio infrastructure, typically extending service to a neighboring community in response to demonstrated local demand.⁷ Commercial broadcasters, as well, rely on translator stations to fulfill their obligation to the public interest.⁸ Whether extending service or filling in gaps in signal coverage, translator stations provide indispensable emergency, news, and other informational services to millions of Americans.⁹

Public radio translators are often constructed with Federal and state public funding and almost always at the behest of and with financial support from the local community.¹⁰ A number of public radio licensees and organizations provided compelling testimony regarding the public interest inherent in public radio's translator services.¹¹ Western North Carolina Public Radio, for instance, utilizes six translator stations to extend the service of WCQS, Asheville, NC, a local Western North Carolina station, to approximately 160,000 people in rural areas of Western North

Named State Broadcasters Associations at 7-9 [hereinafter "State Broadcasters Comments"]; Comments of the National Association of Broadcasters at 16 [hereinafter "NAB Comments"].

⁷ NPR Comments at 7-8.

⁸ See NAB Comments at 21; State Broadcasters Comments at 7-8.

⁹ See PRRO Comments at 1 ("Over nine (9) million persons in the United States receive a public radio signal through a public radio translator station.") (citation omitted).

¹⁰ NPR Comments at 6-8. Indeed, federal funding through the Corporation for Public Broadcasting indirectly supports over 660 public radio translators in 45 states. SRG Comments at 6. See also Comments of Sacred Heart University, Inc. at 6 ("[T]he grant of Sacred Heart's Long Island translator applications came at great expense to Sacred Heart, and came with the support of National Telecommunications and Information Administration, Corporation for Public Broadcasting, State University of New York, Long Island University and many Members of Congress.").

¹¹ We especially commend to the Commission the 79-page appendix submitted as part of the comments of the Public Radio Regional Organizations describing 220 public radio translator stations and their service to the public. PRRO Comments, Appendix A. See also Comments of Public Radio FM Translator Licensees at 3-6 (discussing the local services provided by public radio translators).

Carolina.¹² One of those translator stations, W209AE, was originally built eighteen years ago with funding from the Public Telecommunications Facilities Program of the Department of Congress and with matching funds from members of the community.¹³ It has been serving the residents of Cullowhee, NC continuously ever since.

Public radio stations also localize their services by ascertaining and addressing issues of particular interest to communities served by their translator stations.¹⁴ For instance, Western North Carolina Public Radio "covers news in [the translator communities]; [airs] public service announcements about activities that take place in these communities; and [produces] programming from the cultural events that take place in these communities."¹⁵ Translators also deliver critical local emergency information.

The translator is especially important to southern Arizonans for providing information about wildfires (the last several years have seen many large fires in the mountains of southern Arizona) and the severe weather and flooding that usually accompanies southern Arizona's monsoon season of July and August.¹⁶

In Alaska, translators can literally preserve life and public safety.

Our translators carried our station's programming and provided critical emergency information to listeners during the Miller's Reach wildfires. Our news director,

¹² See Comments of Western North Carolina Public Radio, Inc. at 6 [hereinafter "WNCPR Comments"].

¹³ See *id.* at 6 & 8 n.2. More than 50% of the translators operated by PRRO members received PTFP funding, PRRO Comments at 7, and the individual communities often go to extraordinary lengths to raise matching funds. See, e.g., *id.*, Appendix A (Jefferson Public Radio) ("In Port Orford[,] school children sold soft drinks door-to-door after school to help raise matching funds.")

¹⁴ NPR Comments at 8.

¹⁵ WNCPR Comments at 5-6.

¹⁶ PRRO Comments, Appendix A (KUAZ, Tucson, Arizona).

while reporting live from the road was warning of smoke obscuring the road in areas and the need to have car lights on in case a driver suddenly entered a cloud of smoke. He was struck by the power of our broadcasts when cars all around him started turning on their lights.¹⁷

Other examples of important public radio translator services abound,¹⁸ including radio reading services for the print impaired.¹⁹ While we are especially proud of the invaluable services public radio translators provide, they are not alone in delivering important services to local communities across the country.²⁰

The comments supporting the displacement of translator stations by LPFM stations offer a variety of policy pronouncements united only by the absence of any compelling policy rationale.²¹ Several commenters appear to endorse the Commission's reliance on the 2003 translator-filing window and the number of applications it generated.²² As we and others noted,

¹⁷ Comments of Public Radio FM Translator Licensees at 4 (KSKA(FM), Anchorage, Alaska).

¹⁸ See, e.g., Comments of Temple University Public Radio at 3 ("Locally-produced news and coverage of cultural, political, and general interest topics and events by Temple's team of fifteen reporters and producers results in programming on these [6 translator] stations that would otherwise not be available to the public.")

¹⁹ SRG Comments at 6.

²⁰ See, e.g., Comments of NRC Broadcasting, Inc. at 4-6 (providing numerous examples of event-specific and issue-oriented programming).

²¹ See Comments of REC Networks at 15 (proposing the creation of 8 subclasses of translator stations) [hereinafter "REC Networks Comments"]. The Prometheus Comments offer competing proposals for downgrading translator stations based on (1) a variety of licensee- and service-specific factors and (2) alternatively, a modified version of the REC Networks proposal. Prometheus Comments, Appendices B and C.

²² Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6777. See Comments of Limestone Community Radio at 2. See also REC Networks Comments at 17 ("We have specifically excluded [from protection] the translators that were applied for during the 'Great Translator Invasion' 2003 filing window.").

however, a lengthy freeze on the filing of translator applications explains, at least in part, the heightened demand for translator construction permits.²³ Indeed, during that same time period, demand for public radio services has grown significantly,²⁴ and public radio stations have sought to satisfy that demand, including by preparing and filing new translator applications in the 2003 filing window.²⁵

Moreover, assuming some applicants abused the filing window to traffic in translator permits, such abuse cannot justify the Commission's dismissing all pending mutually exclusive applications, after having already processed 3,300 singleton applications, let alone downgrading existing translator stations.²⁶ We agree with a number of other commenters that speculation in broadcast applications is a problem, but the Commission possesses a number of tools to address that problem, including investigating suspicious applications, enforcing the application filing requirements and related Commission rules, and limiting the number of applications that may be filed in a given window.²⁷

It has also not been established that the applications filed during the 2003 filing window

²³ NPR Comments at 10; PRRO Comments at 9.

²⁴ Phil Rosenthal, "NPR prospers, walled off from Wall Street," Chicago Tribune, Sept. 14, 2005, *reprinted at* <http://www.chicagotribune.com/services/newspaper/premium/printedition/Wednesday/business/chi-0509140135sep14,1,532606.column> ("Wall Street probably would be impressed by a media outfit that managed to double its weekly audience from 13 million to 26 million in a little more than six years.")

²⁵ See PRRO Comments at 9-10; Comments of the University of Southern California at 3.

²⁶ Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6778. The filing of mutually exclusive applications may be more likely in urbanized areas where population density is greater and spectrum is less available, but the Commission cannot assume that all the speculative applications are the subject of competing, mutually exclusive applications.

²⁷ NPR Comments at 11-13. See also PRRO Comments at 19-21; Comments of Public Radio FM Translator Licensees at 8-10.

have unfairly precluded LPFM service. The Commission itself disputes the preclusive effect of the translator applications because of technical differences between the two services.²⁸

Assuming some applicants filed a large number of speculative applications, as the Commission and LPFM advocates suspect, vigorously applying the Commission's rules should result in the dismissal of a number of applications and the licensing of fewer translator stations.²⁹

For these reasons, the Commission should not summarily dismiss the currently pending translator applications. Indeed, we also join with a number of other commenters in urging the Commission to lift the current freeze on the processing of the pending applications.³⁰ Only by processing the applications will the Commission identify the improper applications, and entities that properly submitted bona fide applications expended valuable time and resources in doing so and are entitled to a reasonably prompt licensing decision.

Apart from the 2003 translator filing window, the only other suggested basis for downgrading the translator service requires an assumption that the service provided by LPFM stations is *always* more locally responsive and qualitatively better than that provided by translator stations. The record established by the comments filed in response to the Second Reconsideration Order/Further Notice belies that assumption.

²⁸ Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6777. See NPR Comments at 11.

²⁹ As others noted, moreover, LPFM applicants had a full and fair opportunity to file for new 100 watt LPFM stations prior to the 2003 filing window, and they did so in large numbers. NAB Comments at 28-29.

³⁰ See id. at 27-31; Joint Comments of Galaxy Communications, L.P. and Desert West Air Ranchers Corporation at 7-8 [hereinafter "Galaxy Communications and Desert West Joint Comments"].

It is indisputable that translators are generally barred from originating programming³¹ and LPFM stations are permitted, but not required, to originate programming.³² That distinction does not mean that the service of every LPFM station is always superior to that of every translator station because the locus of production is not necessarily determinative of whether the programming meets the needs and interests of a given community of service. As the Commission itself has recognized, "[a] program, for example, that discusses teenage drinking generally may be highly relevant to a particular community even though it is not produced specifically for that community or tailored to its particular problems in this area."³³ As others have pointed out, moreover, LPFM stations do not bear many of the public interest obligations imposed on full power stations,³⁴ and the LPFM service is still in its infancy.³⁵ Thus, it is premature, at least, to modify the Commission's rules so that such longstanding and important community resources as the translator services of Western North Carolina Public Radio, KUAZ, Tucson, Arizona, or KSKA(FM), Anchorage, Alaska,³⁶ may be displaced whenever a prospective LPFM applicant decides to apply to construct a mutually exclusive LPFM station.

Even assuming that some LPFM stations, as an origination service, may better serve the

³¹ 47 C.F.R. § 74.1231(g).

³² Id. § 73.872(b)(3).

³³ In the Matter of Broadcast Localism, Notice of Inquiry, 19 FCC Rcd. 12425, 12431 (2004). Galaxy Communications and Desert West Air Ranchers Corporation are therefore wrong in claiming that "geographically distant . . . translators provide nothing which might be viewed as "locally-oriented" programming" . . . Galaxy Communications and Desert West Joint Comments at 6 n.11.

³⁴ Comments of the National Translator Service at 3-4 [hereinafter "NTA Comments"].

³⁵ State Broadcasters Comments at 3.

³⁶ See pages 4-5, supra.

public interest than some translator stations, the Commission should consider the additional interference that would result from substituting LPFM stations for translator stations. As the Educational Media Foundation noted, translator stations are required to afford full power stations greater protection from interference than are LPFM stations.³⁷ Thus, translators are prohibited from causing interference to any "regularly used" full power FM station signal.³⁸ LPFM stations, by comparison, only protect subsequently authorized full power FM stations within the core of their service area.³⁹ Therefore, allowing LPFM stations to displace translators will directly result in increased interference across the FM spectrum.

In seeking to justify downgrading translator stations, several commenters focus on the use of satellite technology to "feed" translators operating on the reserved FM frequency.⁴⁰ Even if an LPFM station originating local programming 24 hours a day, 7 days a week would better serve the public interest than any one of an extensive network of centrally programmed and satellite-fed translator stations, the fact remains that satellite technology is simply that -- a technology. It is also used to support public radio translators providing a mix of local, regional, and national programming in a manner that is far more locally responsive than a new, displacing LPFM station might prove to be. In the case of KCRW, Santa Monica, for instance, satellite technology is used to feed several of the 7 translators it operates.⁴¹ Without that technology, it

³⁷ Comments of Educational Media Foundation at 5.

³⁸ 47 C.F.R. § 74.1203(a)(3).

³⁹ Id. § 73.809(a).

⁴⁰ See Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6776-77; NTA Comments at 3.

⁴¹ PRRO Comments (Santa Monica Community College District).

would not be able to serve, among others, the 400 residents of Gorman, California with the only public radio service available in the community.⁴²

Distance, like satellite technology, is also not an appropriate basis for judging the public service provided by a given translator. Public radio translators are extensively deployed in the Western United States and other rural areas precisely because they provide a relatively inexpensive means of serving sparsely populated, underserved areas separated by great distances and featuring mountainous terrain. As an example,

Eastern New Mexico University, with its Portales public radio station KENW-FM and Maljamar sister station KMTH-FM, serves all the high plains *Llano Estacado* country of Eastside New Mexico from Texas west to the central mountains, and from Texas to the south to Colorado to the north with 16 translators.⁴³

Because of terrain and distance, moreover, public radio licensees have established extensive "daisy chains" of translator stations to serve these areas.⁴⁴ Some have utilized satellite technology to replace links in the "chain" when justified by the particular circumstances, including cost, but, irrespective, translator daisy chains remain the predominant means of serving rural populations.⁴⁵ And, because the public interest in these translator networks is so

⁴² Id.

⁴³ Informal Comments of Rocky Mountain Corporation for Public Broadcasting at 3 [hereinafter "Rocky Mountain CPB Comments"]. See also Comments of Public Radio FM Translator Licensees at 4-5 (discussing "KUNM(FM), in Albuquerque, New Mexico, whose seven (7) translators serve an extremely rural population of 50,025 persons, spread over an astounding 2,936 square kilometers of combined service areas").

⁴⁴ Rocky Mountain CPB Comments at 3-4 (Only 2 of KENW's 12 (*Ft. Sumner* and *Quay*) receive its signal off-air, while 10 are daisy-chained (directly and indirectly) from the *Quay* translator. *Tucumcari* receives the *Quay* signal, and is in turn received by *Montoya* and *Wagon Mound*. *Conchas* receives *Montoya*. *Wagon Mound* is received by *Las Vegas*, *Roy*, *Raton* and *Des Moines*. *Las Vegas* is received by *Apache Springs*, and *Des Moines* by *Clayton*.)

⁴⁵ See, e.g., SRG Comments at 6 ("In many states, public radio uses translators to build

compelling, the Federal and state governments have provided substantial financial support to construct, maintain, and expand them.⁴⁶ Yet, the displacement of a single translator in a chain could eliminate service for many who have come to rely on the service of that translator or others in the chain.⁴⁷

Based on the public interest inherent in these services, the Commission should not categorically downgrade translator stations based on factors such as the use of satellite technology or distance that are not necessarily determinative of whether the public interest would be better served by displacing a particular translator with a new LPFM station. Instead, we urge the Commission to pursue a more measured course.

First, the Commission should begin processing the pending translator applications and, in the course of doing so, take steps to identify and then thoroughly investigate apparently speculative ones. Among other things, the Commission might sort the pending applications based on applicant identity and attributable interest and then scrutinize the applications of applicants who filed large numbers of applications.⁴⁸ If speculators indeed filed large numbers of applications, they are unlikely to pursue the scrutinized applications, let alone demonstrate that

"daisy-chain" delivery systems -- putting even one of these translators at risk threatens the entire delivery configuration.").

⁴⁶ See, e.g., PRRO Comments at 7-8.

⁴⁷ See Rocky Mountain CPB at 3 ("Should the Quay translator fall prey to an encroaching authorized LPFM, KENW service would be killed at 9 more translators, and listeners in most of the northeast quadrant of New Mexico deprived of public radio service they are accustomed to.").

⁴⁸ The precise number would depend on the breakdown of applicants and commonly filed applications. If, as has been alleged, "many of the translator applications were filed by a relatively small number of . . . filers," Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6777, the number of applications/applicant that would trigger heightened scrutiny would be large and the number of applicants whose applications are subject to scrutiny would be small.

they were in a position to construct and operate the proposed translators in accordance with Commission rules at the time the applications were filed.⁴⁹ Identifying and then scrutinizing apparently speculative applications in this way should substantially reduce the number of pending applications. In any event, if, after processing and investigating the pending applications, the Commission finds relatively few speculative ones, then demand for translator service rather than speculation explains the significant number of applications that were filed during the 2003 filing window.

Second, the Commission should consider whether common ownership of large numbers of translator stations -- on the order of hundreds of stations -- may be inherently inimical to the proper use of translator stations and, by extension, the public interest. In addition, the Commission should consider whether a translator network employing only a few full power origination stations and translators dispersed among a large number of states is consistent with the purpose of the translator service and the public interest. Assuming one or both turn out to be true, the Commission should also consider appropriate limits on the number of translator stations in which a single entity may hold an attributable interest and on the number of applications a single entity may file in a given translator filing window.

In sum, we agree that abusive speculation in translator applications disserves the public interest, but, individually or collectively, the number of pending translator applications, the use of satellite technology, and the distance between a translator and its parent station cannot justify the categorical downgrading of translator stations in relation to current or future LPFM stations. The service provided by many translator stations, specifically including public radio translator

⁴⁹ See, e.g., NPR Comments at 12-13 (discussing the Commission's specific translator application filing requirements.)

stations, is critical to the informational needs of millions of Americans, particularly in rural and other underserved areas, and should not be sacrificed. The Commission possesses ample means to identify and deter speculative translator applications, and that is the appropriate response to any suspicions aroused by the 2003 translator-filing window.

II As A Matter Of Law And Policy, The Commission Should Not Eliminate The Interference Protections LPFM Stations Currently Afford Full Power Stations

NPR's initial comments established both that the Commission lacks statutory authority to eliminate the second and third adjacency protections for current and future full power stations and that eliminating such protections is contrary to sound spectrum management.⁵⁰ Commenters agreed on both scores.⁵¹ The only commenter to suggest that the Commission possesses authority to eliminate at least the third adjacency protection confuses the clerical omission of the third-adjacency protection from Section 73.809 of the Commission's rules with the statutory authority to eliminate the protection.⁵²

Perhaps recognizing the lack of statutory authority to eliminate the second and third adjacency protections, the other principal LPFM advocates, Prometheus *et al.*, simply ignore the issue, arguing generally that the Commission should protect LPFM stations from future new or

⁵⁰ Id. at 14-19.

⁵¹ See NAB Comments at 5-8 (statutory prohibition); id. at 9-11 (Commission spectrum policy). See also Comments of Cox Radio, Inc. at 3-6 (Commission spectrum policy).

⁵² REC Networks Comments at 19. See NAB Comments at 6 ("[u]nder Section 73.809 . . . LPFM stations are responsible for resolving all allegations of actual interference to the reception of a co-channel, or first, second-, or *third-adjacent* channel full service station within the full service station's 70 dBu contour.") (quoting, with emphasis, Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6780).

modified full power stations.⁵³ Prometheus argues in the alternative that the Commission should adopt a "processing guideline," the apparent consequence of which would be to inhibit, if not deny, the authorization of new or modified full power stations.⁵⁴ As the Commission properly concluded in previously rejecting this suggestion, such ad hoc processing would provide LPFM station licensees with no certainty of continued operation while at the same time according LPFM stations primary status in relation to new or subsequently modified full power stations.⁵⁵

As a separate matter, but no less availing, Prometheus argues in favor of substituting a contour overlap methodology for the distance separations mandated in the statute.⁵⁶ Prometheus first argues that, notwithstanding the plain language of the statute requiring the Commission to "prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels,"⁵⁷ the Commission may now adopt a contour overlap methodology to license LPFM stations closer to full power stations than the minimum distance separations would allow.⁵⁸ In so arguing, Prometheus offers only the general proposition that agency discretion is not necessarily frozen when Congress enacts legislation.⁵⁹ True as that proposition may generally be, the legislative intent in this case is clear.⁶⁰ Even REC Networks,

⁵³ Prometheus Comments at 16.

⁵⁴ Id. at 17-19.

⁵⁵ Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6780.

⁵⁶ Prometheus Comments at 2-14.

⁵⁷ 2001 D.C. Appropriations Act, § 632(a)(1)(A).

⁵⁸ Prometheus Comments at 3-4.

⁵⁹ Id. at 4-7.

⁶⁰ Even if the plain language of the statute were ambiguous, the legislative history

another principal LPFM advocate, concedes the point.⁶¹

Prometheus next argues that, because the Commission has now commissioned and reported to Congress on the results of the Mitre Study, "the weight of Section 632 has diminished."⁶² Putting aside the Study's significant methodological flaws,⁶³ that exercise is wholly separate from the express denial of Commission authority to eliminate the restored interference protections.⁶⁴

Prometheus also argues, as a matter of policy that a contour overlap methodology is appropriate for the LPFM service.⁶⁵ Prometheus acknowledges, however, that "LPFM applicants made many foolish errors" in filling out the LPFM station application form, but complains about applicants having to read and comprehend the form's instructions and correctly complete the application form.⁶⁶ The Commission's own experience processing LPFM applications

underscores Congress's intent to undue the Commission's attempt to eliminate the third adjacency protection and require the Commission "to maintain the same level of protection from interference from other stations for existing stations and any new full-power stations as the Commission's rules provided for such full power stations on January 1, 2000, as provided in section [sic] 73 of the Commission's rules (47 C.F.R. 73)." H.R. Rep. No. 567, 106th Cong., 2d Sess. 8 (2000).

⁶¹ REC Networks Comments at 13 ("At this time, we are required by statute to use distance spacing methodology however at a future time, we may be able to consider opportunities for LPFM applicants to use prohibited overlap models, but not at this time.").

⁶² Prometheus Comments at 9.

⁶³ See Comments of National Public Radio, Inc., In the Matter of The Mitre Corporation's Technical Report, "Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Stations", MM Docket No. 99-25, filed Oct. 14, 2003.

⁶⁴ See 2001 D.C. Appropriations Act, § 632(a)(2)(A).

⁶⁵ Prometheus Comments at 9-12.

⁶⁶ Id. at 11-12. Prometheus cites as an example, a required certification that the applicant had no other broadcast interests, "which required applicants to affirm a negative statement" and

underscores the need for a simple and reliable interference methodology appropriate to the LPFM service.⁶⁷ Accordingly, the Commission should reject Prometheus's arguments in favor of a more complex interference protection methodology.

Finally, REC Networks asks the Commission to eliminate the intermediate frequency, or "IF," protection.⁶⁸ It cites the absence of an explicit IF protection requirement in the statutory provision requiring, *inter alia*, restoration of the third adjacency protection.⁶⁹ It also notes that the translator rules provide an exception from the IF protection requirement for translators operating with less than 100 watts effective radiated power.⁷⁰ With regard to the first point, the statutory provision at issue was intended to restrain the Commission from weakening interference protections; it does not define the outer limits of the Commission's authority to manage the radio frequency spectrum and to prevent interference in the public interest.⁷¹ And, as the Commission previously found, eliminating the IF protection is likely to increase interference to the reception of FM service.⁷²

which "many applicants" were unable to complete correctly. *Id.* at 12 n.6.

⁶⁷ Second Reconsideration Order/Further Notice, 20 FCC Rcd. at 6779 ("[I]t is abundantly clear that many LPFM applicants had significant problems successfully preparing basic technical showings, completing simplified application forms, and responding to staff requests for required amendments.").

⁶⁸ REC Networks Comments at 13.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See 47 U.S.C. § 151.

⁷² See In the Matter of Creation of Low Power Radio Service, 15 FCC Rcd 2205, at 2207 (2000) (retaining, *inter alia*, the intermediate frequency protections to avoid compromising existing service and to maintain the integrity of the FM band).

With regard to the IF frequency protection exception for certain translators, it bears repeating that translators are subject to a much higher interference protection standard.⁷³ Thus, all translators are prohibited from causing interference to any "regularly used" full power FM station signal wherever that signal may be received.⁷⁴ LPFM stations, on the other hand, are only required to protect subsequently authorized full power FM stations within their principal community contour, their community of license, or, in the case of noncommercial educational stations, any area of the community of license predicted to receive a 1 mV/m signal.⁷⁵ Accordingly, given the more limited area in which a full power station's signal is entitled to protection, the Commission should continue to protect the IF frequencies of full power stations.

⁷³ See notes ³⁷⁻³⁹, supra, and accompanying text.

⁷⁴ 47 C.F.R. § 74.1203(a)(3).

⁷⁵ Id. § 73.809(a).

Conclusion

In the interest of encouraging NCE services from full power, translator, and LPFM stations that serve the public interest, convenience, and necessity, NPR urges the Commission to modify its LPFM rules in accordance with these Reply Comments and NPR's initial Comments.

Respectfully Submitted,

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